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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,332	12/21/2000	Kinya Kato	35.C14996	6155
5514	7590	04/16/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO			WONG, EDNA	
30 ROCKEFELLER PLAZA			ART UNIT	
NEW YORK, NY 10112			PAPER NUMBER	
			1753	

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/741,332

Applicant(s)

KATO ET AL.

Examiner

Edna Wong

Art Unit

1753

ed

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-26,56-60,63-65,67-81 and 86-92 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-26,56-60,63-65,67-81 and 86-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This is in response to the Amendment dated March 22, 2004. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Response to Arguments

Double Patenting

Claims **2-26, 28-39, 56-60, 63-65 and 67-81** have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims **1-49** of U.S. Patent No. 6,538,170 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the referenced patent and the present application are claiming common subject matter.

With respect to claims 28-39, the rejection under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of U.S. Patent No. 6,538,170 B2 has been withdrawn in view of Applicants' amendment. Claims 28-39 have been cancelled.

With respect to claims 2-26, 56-60, 63-65 and 67-81, the rejection under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of U.S. Patent No. 6,538,170 B2 is as applied in the Office Action dated October 21, 2003 and incorporated herein. The rejection has been maintained for the following reasons:

Applicants state that they intend to submit a Terminal Disclaimer in order to

overcome this rejection when all remaining issues in this case have been resolved (Applicants' Amendment, page 15, lines 10-13). In response, all remaining issues in this case have been resolved. The Examiner has contacted Jason Okun on April 12, 2004 indicating that the claims are in condition for allowance.

Claim Rejections - 35 USC § 103

I. Claims **67-68 and 74-79** have been rejected under 35 U.S.C. 103(a) as being unpatentable over **Calcote et al.** (US Patent No. 5,813,799) in combination with **Robson** (US Patent No. 5,308,507).

The rejection of claims 67-68 and 74-79 under 35 U.S.C. 103(a) as being unpatentable over Calcote et al. in combination with Robson has been withdrawn in view of Applicants' Remarks.

II. Claims **28-35 and 37-39** have been rejected under 35 U.S.C. 103(a) as being unpatentable over **Calcote et al.** (US Patent No. 5, 813,799) in combination with **Robson** (US Patent No. 5,308,507).

The rejection of claims 28-35 and 37-39 under 35 U.S.C. 103(a) as being unpatentable over Calcote et al. in combination with Robson has been withdrawn in view of Applicants' amendment. Claims 28-35 and 37-39 have been cancelled.

Response to Amendment

Double Patenting

Claims **86-92** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims **1-49** of U.S. Patent No. 6,538,170 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the referenced patent and the present application are claiming common subject matter, as follows:

- (a) mixing a gas containing a pollutant extracted or emitted from soil and a chlorine-containing gas to form a gaseous mixture; and
- (b) irradiating the gaseous mixture with light to decompose the pollutant.

The independent claims of the present application recites similar limitations, either alone or in combination with their dependent claims, as that of the claims of the patent wherein the claims of the present application are encompassed by the claims of the patent and/or vice versa. Therefore, the claims would have been obvious variants over each other.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

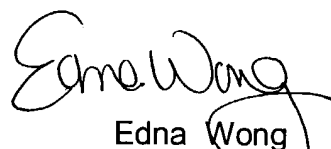
action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edna Wong whose telephone number is (571) 272-1349. The examiner can normally be reached on Mon-Fri 7:30 am to 5:00 pm, alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).


Edna Wong
Primary Examiner
Art Unit 1753

EW
April 15, 2004